

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)
)
Plaintiff,) 8:04CR158
)
v.)
)
JOSHUA THORPE,) MEMORANDUM OPINION
)
Defendant.)
_____)

This matter is before the Court on defendant Joshua Thorpe's (hereinafter "defendant") petition for reduction in sentencing under Fair Sentencing Act H.B. 1789 in accordance with Sec. 3582(c) (2) (Filing No. 226). Under 18 U.S.C. § 3582(c) (2), defendant seeks a reduction of his term of imprisonment as a result of the November 1, 2010, Amendments to the United States Sentencing Guidelines ("Sentencing Guidelines"). Eighth Circuit precedent forecloses defendant's argument, and he is therefore not entitled to the retroactive application of the November 1, 2010, Amendments to the Sentencing Guidelines.

On November 1, 2010, amendments to the Sentencing Guidelines became effective to apply to all offenders sentenced after that date. See 18 U.S.C. § 3553(a) (4) (ii) (sentencing courts must consider the guidelines that "are in effect on the date the defendant is sentenced"). Defendant now urges this Court to retroactively apply the amendments to his case for a possible sentence reduction. The Eighth Circuit has held,

however, that these amendments to the Sentencing Guidelines are not retroactive. See *United States v. Orr*, No. 09-3644, 2011 WL 722405, at *12 (8th Cir. Mar. 3, 2011) ("Thus, as we have previously recognized, Congress expressed no desire in the [amendments to the sentencing guidelines] that [they] be applied retroactively, and consequently the federal Savings Statute clearly forecloses [defendant's] argument for retroactive application.")

Accordingly, defendant's petition for reduction in sentencing under Fair Sentencing Act H.B. 1789 in accordance with Sec. 3582(c)(2) will be denied. A separate order will be entered in accordance with this memorandum opinion.

DATED this 4th day of April, 2011.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court